

## § 10.61

in accordance with §10.11(b) of these rules.

(f) *Procedures for use of interrogatories.*

(1) If depositions are to be taken and submitted on written interrogatories, the interrogatories shall be filed in triplicate with the application for deposition and served on the parties. Within ten days after service, any party may file, in triplicate, with the Proceedings Clerk, his objections, if any, to such interrogatories and may file such cross-interrogatories as he desires to submit. Other parties shall have ten days to file their objections to cross-interrogatories. Objections shall be settled by the Administrative Law Judge.

(2) When a deposition is taken upon written interrogatories and cross-interrogatories, no party shall be present or represented and no person other than the witness, a stenographic reporter, and the officer shall be present. The officer shall propound the interrogatories and cross-interrogatories to the witness, and the interrogatories and responses thereto shall be transcribed and reduced to writing.

(g) *Use of depositions at hearing.* (1) Any part or all of a deposition, to the extent admissible under rules of evidence applied as though the witness were then present and testifying at the hearing, may be used against any party who had reasonable notice of the taking of the deposition, if the Administrative Law Judge finds that:

(i) The witness is dead;

(ii) The witness is unable to attend or testify because of age, illness, infirmity, or imprisonment;

(iii) The witness is out of the United States at the time of the hearing, unless it appears that the absence of the witness was procured by the party offering the deposition.

(2) If only part of a deposition is offered in evidence by a party, an adverse party may require him to introduce any other part which ought in fairness to be considered with the part introduced, and any party may introduce any other parts.

(3) Objection may be made at a hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of

## 17 CFR Ch. I (4-1-11 Edition)

the evidence if the witness were then present and testifying.

[41 FR 2511, Jan. 16, 1976, as amended at 60 FR 54802, Oct. 26, 1995]

## Subpart E—Hearings

### § 10.61 Time and place of hearing.

(a) *Notice.* All parties shall be notified of the time and place of hearing, which shall be fixed with due regard for the public interest and the convenience and necessity of the parties and their representatives.

(b) *Requests for change.* A request for postponement of a hearing or for a change in the place assigned for hearing will be granted by the Administrative Law Judge only for good cause shown.

### § 10.62 Appearances.

(a) *Who may appear.* The parties may appear in person, by counsel or by other representatives of their choosing, subject to the provisions of §10.11 of these rules and part 14 of this chapter, dealing with appearance and practice before the Commission.

(b) *Effect of failure to appear.* (1) If any party to the proceeding, after filing an answer fails to appear at the hearing or any part thereof, he shall to that extent be deemed to have waived the right to an oral hearing in the proceeding. In the event that a party appears at the hearing and no party appears for the opposing side, the party who is present may present his evidence, in whole or in part, in the form of affidavits or by oral testimony, before the Administrative Law Judge.

(2) A failure to appear at a hearing shall not constitute a waiver of a party's right to propose findings of fact based on the record in the proceeding, to propose conclusions of law or to submit briefs, in the manner provided in §10.82, if the non-appearing party submits prior to the scheduled hearing or within three days thereafter, a notice of appearance indicating his intent to continue to participate in the proceeding. Otherwise, his failure to appear will constitute a default, and a default order may be sought in accordance with procedures set forth in §10.93 of these rules.